

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs April 30, 2003

STATE OF TENNESSEE v. SUSAN WOOLUM

Direct Appeal from the Criminal Court for Knox County
No. 74968 Richard Baumgartner, Judge

No. E2002-01793-CCA-R3-CD
June 18, 2003

The appellant, Susan Woolum, pled guilty to one count of theft of property valued at over \$500 and less than \$1,000 and five counts of theft of property valued at \$500 or less. The offenses are classified as one Class E felony and five Class A misdemeanors in violation of Tenn. Code Ann. §39-14-103. The appellant received a Range I sentence of two years in the Tennessee Department of Correction and five 11-month-and-29-day sentences to be served at 75%. All sentences were to be served concurrently. A sentencing hearing was held on July 19, 2002 and the trial court directed that appellant serve a sentence of split confinement with six months in the Knox County Penal Farm and 18 months on State probation for her felony conviction, and a sentence of 11 months and 29 days on full probation for her misdemeanor convictions. In this direct appeal the appellant raises the issue of whether the trial court's refusal to grant full probation was supported by the record. After a review of this case, we find that the trial court was correct in denying full probation and therefore we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES and ROBERT W. WEDEMEYER, JJ., joined.

William C. Talman, Knoxville, Tennessee, for the appellant, Susan Woolum.

Paul G. Summers, Attorney General & Reporter; Thomas E. Williams, III; Assistant Attorney General; Randall E. Nichols, District Attorney General; and Mike Gallegos, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Background

As an exhibit at the sentencing hearing the appellant's pre-sentence report, entered without an objection, contained the following official version of the facts in this case:

On dates between 5-12-01 and 10-24-01 warrants were served on Susan Woolum charging her with theft by shoplifting. The warrants alleged that the defendant, assisted by her fourteen year old daughter, stole merchandise from Goody's Family Clothing Stores. It was their practice to carry items to customer service, represent them as purchased items, and exchange them for other items then leave the store with them. The affiant initiated an internal investigation when he became aware of the defendant's excessive use of gift cards at Goody's stores in Tennessee and Kentucky. The affiant reviewed videotapes of corresponding dates and time of the defendant's transactions and observed the defendant's fraudulent conduct. She stole merchandise on: 10-24-01 in the amount of \$483.92; 11-6-01 in the amount of \$288.83; 10-9-01 in the amount of \$209.93; 10-27-01 in the amount of \$357.90; and 10-15-01 in the amount of \$267.91. She also stole property from Proffitt's on 5/12/01 in the amount of \$511.98 and fled the store leaving her juvenile daughter to be taken into custody.

At the appellant's sentencing hearing on July 19, 2002, the State filed the pre-sentence report with the Court. The State agreed to stand on the report and left the issue regarding probation to the discretion of the Court. However, the State did ask the court to take note of the appellant's eight prior theft convictions which were all misdemeanors. Appellant addressed the court stating that she was sorry for her conduct and that she had recently lost her husband to cancer. She then promised that she would live right and said that she wanted to be a mom to her children. The court found from the pre-sentence report that the appellant had a long history of committing this type of crime dating back 17 years and that even though she had previously been convicted and put on probation a number of times, her conduct indicates that she is still engaging in this type of activity. At the conclusion of the proof and argument, the court ordered the appellant to serve six months incarceration with the remaining 18 months to be served on state probation for the felony conviction and the five sentences of 11 months and 29 days for the misdemeanor convictions to be served on full probation.

Analysis

Tennessee Code Annotated section 40-35-401(d) and -402(d) (1990) states that the standard of review for a sentence imposed by the trial court is de novo with a presumption that the trial court's determinations are correct. This presumption of correctness is "conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances." State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991). If defendants are convicted of a Class C, D or E felony they are presumed to be a favorable candidate for alternative sentencing, if they do not have a record evincing a clear disregard for the law and a failure of rehabilitation. Tenn. Code Ann. § 40-35-102(5), (6). However, the burden of establishing his or her suitability for full probation falls to the defendant. Tenn. Code Ann. §§ 40-35-303(b); see also State v. Bingham, 910 S.W.2d 448 (Tenn. Cri. App. 1995).

The trial court found that the appellant failed to carry her burden of demonstrating suitability for full probation. The appellant submits that confinement is not necessary in order to protect society from her offenses and that incarceration is not necessary for the purpose of rehabilitation. The trial court found that the appellant's 17 year criminal record for theft was evidence of a long, "clearly-established pattern" of shoplifting. Along with the fact that appellant had been placed on probation for prior convictions and was continuing to engage in this type of activity her claims that she had seen the error of her ways and would remain on the straight and narrow weighed against her. Based on that criteria the appellant, who has a criminal history extending back 17 years, has been placed on probation a number of times, but continued her criminal activity is not presumed to be a favorable candidate for probation. The trial court also found it disturbing that the defendant included her teenage daughter in the perpetration of the thefts.

It is evidenced by the pre-sentence hearing that the trial judge weighed all aspects of appellant's suitability for full probation and properly sentenced appellant to six months incarceration. Therefore, we find that this issue is without merit.

Conclusion

Based on the foregoing, the judgment of the trial court is AFFIRMED.

JERRY L. SMITH, JUDGE